



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/158863

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Department of Health Services to close Petitioner's BadgerCare+/Medicaid case, a hearing was held on February 16, 2016, at [REDACTED], Wisconsin. Petitioner's hearing request also included challenges to an allegation that she had been overissued BadgerCare+/Medicaid and FoodShare benefits. These matters were assigned other case numbers but the Division of Hearings and Appeals combined all three for this hearing. Previous hearing dates for this appeal were scheduled by the Division of Hearings and Appeals for August 5, 2014, September 12, 2014, October 9, 2014, May 27, 2015, August 12, 2015 and November 11, 2015. All but the August 12, 2015 hearing date rescheduled were at Petitioner's request – see below for a more detailed description.

The issue for determination is whether Petitioner has defaulted by actions that prevented the hearing from proceeding so that a conclusion on the merits could be reached.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dennis C. Schuh, Deputy Chief Legal Counsel
Office of Legal Counsel
1 West Wilson Street
Room 651
Madison, WI 53707-7850

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County.

2. Petitioner filed an appeal with the Division of Hearings and Appeals on July 7, 2014 to contest determinations by the Department of Health Services that she had been overissued FoodShare and BadgerCare+ benefits and a decision by the Department to close her BadgerCare+ case. That request was separated by issue into 3 cases (the above captioned case number, MOP/158862 and FOP/158861). This case is the discontinuance of medical benefits case.
3. The Division of Hearings & Appeals' scheduling history for this case, and Petitioner's two other Division of Hearings and Appeals cases, is as follows:
 - A hearing was scheduled for August 5, 2014 but rescheduled at the request of Petitioner as she need more time to prepare.
 - A second hearing date was scheduled for September 12, 2014 but again rescheduled at Petitioner's request.
 - A hearing date was then set for October 9, 2015 but rescheduled as Petitioner was in a very serious motor vehicle accident in the [REDACTED] area. The matter was held in abeyance for several months as Petitioner was hospitalized out of state for a lengthy period and while ultimately transferred to a hospital in [REDACTED] was still recovering from injuries. She was paralyzed at the waist level and is wheelchair bound.
 - The matter was again scheduled for a hearing to commence on May 27, 2015 but rescheduled at Petitioner's request. Efforts were being made to reach a settlement.
 - It was rescheduled for August 12, 2015 but rescheduled at the request of the Department as the attorney assigned to the case left the Department and the August date was in conflict with another matter scheduled for the newly assigned attorney.
 - The matter was rescheduled for November 11, 2015 but rescheduled as Petitioner's attorney was permitted to withdraw from the case as the attorney/client relationship was not working.
 - Petitioner, now appearing pro se, was offered either January 26-27, 2016 or February 16-17, 2016 for the 2 day hearing. She picked the February dates.
4. The Petitioner appeared for the February 16, 2016 hearing. Called adversely by the Department as its first witness, Petitioner was not responsive to questions; frequently she would not answer the questions that she was asked. She claimed that the system is corrupt and that exhibits offered by the Department, were altered and that Federal and Circuit Court transcripts of her testimony in cases in these courts were altered by court reporters. After about 90 minutes of hearing she indicated that she was leaving as there was no need to continue. This ALJ told the parties that the hearing would break for about 10 minutes to give Petitioner a chance to collect her thoughts and reconsider leaving. After about 30 minutes, the Petitioner was persuaded to return to the hearing by her ex-husband, her son and the ALJ.
5. The matter resumed with the Department calling its next witness – a property manager. Petitioner's mother, her 'second chair' and witness, engaged in a verbal assault on that witness (that witness did not reciprocate the attack) and had to be asked to leave the hearing. She did so. Petitioner was then so difficult with that witness that the undersigned ALJ had to stop the hearing. While not as verbally aggressive as her mother had been, Petitioner wanted to argue with the witness rather than elicit information. At the point the hearing was stopped, Petitioner did not offer to proceed in a more civil fashion and did not ask that the hearing continue.

DISCUSSION

The Wisconsin Administrative Code, at §HA 3.08(1)(d) and (e), provides that the Division of Hearings and Appeals administrative law judge may regulate the conduct at the hearing consistent with due process to ensure an orderly hearing and exclude individuals from a hearing, adjourn the hearing or otherwise reasonably respond to contemptuous behavior. Here, while some delay with the hearing process was certainly warranted by injuries sustained by Petitioner in the motor vehicle accident, Petitioner has been abusive and obstructive of the hearing process. She was completely uncooperative in the course of even this informal administrative hearing. Her lack of cooperation reached the point that proceeding further was nonsensical as Petitioner clearly did not wish to have the process continue and reach any legal conclusion on the merits of the evidence. Moreover, she did not ask that the hearing continue.

Without any intent to elevate the status of the Division of Hearings and Appeals, I do note by analogy that a circuit court may impose sanctions where a party fails to comply with court orders. The sanction must be just. See Wis. Stat., §805.03. The sanction can include dismissal of a case where a noncomplying party has acted egregiously or in bad faith. In *Dane County Department of Human Services v Mabel K.*, 346 Wis. 2d 396 at page 424, paragraphs 69 and 70, a termination of parental rights case where a new trial was granted, the following discussion succinctly summarizes a court's sanction authority:

...

Even if the circuit court determined that Mable K. forfeited her right to a jury and granted a default judgment as a sanction, Wis. Stat. § 805.03 limits the sanctions that a circuit court may impose for failure to comply with court orders to those that are "just." See also *Indus. Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶ 43, 299 Wis.2d 81, 726 N.W.2d 898. In order for a sanction dismissing a civil case to be "just," the non-complying party must act "egregiously or in bad faith." *Id.*; *Schneller v. St. Mary's Hosp. Med. Ctr.*, 162 Wis.2d 296, 311–12, 470 N.W.2d 873 (1991). The Shirley E. court applied that requirement to default judgments at fact-finding hearings in termination of parental rights proceedings. 298 Wis.2d 1, ¶ 13 n. 3, 724 N.W.2d 623.

Where a circuit court concludes that a party's failure to follow court orders, though unintentional, [346 Wis.2d 425] is "so extreme, substantial and persistent" that the conduct may be considered egregious, the circuit court may make a finding of egregiousness. *Hudson Diesel, Inc. v. Kenall*, 194 Wis.2d 531, 543, 535 N.W.2d 65 (Ct.App.1995). Conversely, a party may also act in bad faith, which by its nature cannot be unintentional conduct. *Id.* To find that a party acts in bad faith, the circuit court must find that the noncomplying party "intentionally or deliberately" delayed, obstructed, or refused to comply with the court order. *Id.*

...

The appeal process here is civil. The Division of Hearings & Appeals is not a circuit court; its purpose is to provide a person with an administrative hearing. Administrative procedures and hearings are less formal than the law and procedures governing court matters. Further, there is no legal requirement that the Department make a showing at hearing to justify an overpayment determination. Rather, the hearing gives a person an opportunity to have the Department provide him or her with the documents supporting the Department's claims. An administrative hearing essentially provides to a public assistance recipient an *explanation*, via witness testimony, as to how the agency came to take the negative action on the person's public benefits. This process affords a person the opportunity to understand the rationale for the agency action, to ask witnesses questions and to offer rebutting testimony and documentation. While a hearing request is pending resolution the Department does not pursue an overpayment claim.

Here, this matter, together with the Petitioner's two other related cases was scheduled for a 2 day hearing 6 times before finally coming to an actual hearing nearly 19 months after the appeal was filed. Hearings for other individuals could not be held on those dates and the Department could not collect any

overissuance. The Petitioner testified that she has a bachelor's degree in math and physics and a master's degree in data communication and electrical engineering. She is a highly intelligent and well-educated individual who, by delay and behavior, has chosen not to participate in the hearing and afford herself of the due process rights that the hearing provides. I am, therefore, dismissing the appeal as Petitioner has been contemptuous of the administrative hearing system and abusive of the process to the point that no orderly hearing was going to be allowed by her to proceed to completion. This is egregious. Under these facts, I can only conclude that the Petitioner has defaulted, and her appeals must be dismissed.

CONCLUSIONS OF LAW

That Petitioner has defaulted by actions that prevented the hearing in this matter from proceeding so that a conclusion on the merits could be reached.

THEREFORE, it is,

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of February, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 26, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
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